1890.

SUPREME COURT OF THE UNITED STATES.

No. 162.

JAMES N. OLNEY, LIBELLANT AND APPELLANT,

VS.

THE STEAMSHIP FALCON, HER TACKLE, &c., AND GEORGE LAW, AND MARSHALL O. ROBERTS, CLAIMANTS.

APPEAL FROM THE CIRCUIT COURT UNITED STATES, THE SOUTHERN DISTRICT OF NEW YORK.

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UNITED STATES OF AMERICA,
Southern district of New York, ss:

I, John W. Nelson, clerk of the circuit court of the United States of America, for the southern district of New York, in the second [SEAL.] circuit, do hereby certify that the writings annexed to this certificate are true copies of their respective originals, on file and remaining of record in my office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this fifth day of December, in the year of our Lord one thousand eight hundred and fifty-three, and of the independence of the said United States the seventy-eighth.

JOHN W. NELSON, *Clerk.*

UNITED STATES OF AMERICA,
Southern district of New York, ss:

I, George W. Morton, clerk of the district court of the United States of America, for the southern district of New York, in the sec- [SEAL.] ond circuit, do hereby certify that the writings annexed to this certificate are true copies of their respective originals on file and remaining of record in my office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this fifteenth day of June, in the year of our Lord one thousand eight hundred and fifty-two, and of the independence of the said United States the seventy-sixth.

GEO. W. MORTON, *Clerk.*

At a stated term of the district court of the United States of America, for the southern district of New York, held at the City Hall in the city of New York, on Saturday, the second day of February, in the year of our Lord one thousand eight hundred and fifty.

Present: the honorable Samuel R. Betts, district judge.

JAMES N. OLNEY
vs. } 8—113.
THE STEAMSHIP FALCON.

February 27, 1850. The libellant files his libel in the words following:

To the honorable Samuel R. Betts, judge of the district court of the United States, for the southern district of New York.

The libel and complaint of James N. Olney, of the city of New York, merchant, against the Steamer Falcon, her engine, tackle, ap-

parel and furniture; and against all persons intervening for their interest therein in a cause of contract, civil and maritime; and thereupon the said James N. Olney alleges and articulately propounds as follows:

First. That in the month of April, in the year one thousand eight hundred and forty-nine, the said vessel being then in the port of New York, and destined on a voyage thence to the port of Chagres, the libellant, by himself or agent, shipped on board the said vessel a box of merchandise, marked Cooke, Baker & Co., California, to be therein carried upon the high seas, and within the ebb and flow of the tide from the said port of New York to the port of Chagres and there delivered in like good order, as it was received, the damages of the sea only excepted, unto S. Lea or Zachrisen and Nelson, or their assigns: and the libellants at the same time paid unto said vessel, or the agent thereof, the freight upon said merchandise, amounting to the sum of ten dollars and fifty cents; and the agents of said vessel thereupon, on the nineteenth day of April aforesaid, duly executed three bills of lading, all of the same tenor and date, one of which being accomplished the others to stand void, and delivered the same unto the agent of the libellant, a copy of which bill of lading is hereto annexed.

Second. That shortly after, the said vessel set sail upon the said voyage and in time safely arrived at the port of Chagres, when the consignees of said box duly demanded the same of those on board and in charge of said steamer, but the same was not delivered but was refused, and has never been delivered unto either of said consignees, or unto the libellant.

Third. That by reason of the premises the libellant is entitled to recover of said vessel the damages by him sustained, which amount to the sum of eighteen hundred dollars and upwards, which sum, or any part thereof, the agents, owners of said vessel have hitherto refused and still refuse to pay, to the great damage of the libellant.

Fourth. That said steamer is now within the southern district of New York, lying at the port of New York, where she has but lately returned first since the shipping aforesaid.

Fifth. That all and singularly the premises are true and within the admiralty and maritime jurisdiction of the United States and of this honorable court; in verification whereof, if denied, the libellant craves leave to refer to the deposition and other proofs to be by him exhibited in this cause.

Wherefore the libellant prays that process in due form of law, according to the course and practice of courts of admiralty and of this honorable court, may issue against the said Steamer Falcon, her engine, tackle, apparel, and furniture, wherever the same may be found, and that all persons having or pretending to have any right, title, or interest therein, may be cited to appear and answer upon oath all and singular the matters so articulately propounded, and that this honorable court would be pleased to pronounce for the damages aforesaid, and otherwise right and justice to administer in the premises, and also condemn

the said steamer, her engines, tackle, apparel, and furniture, and all persons intervening for their interest therein, in costs.

JAS. N. OLNEY.

Sworn to before me this 27th day of February, 1850.

GEO. W. ATERSON,
U. S. Com'r.

C. S. BENEDICT, *Proctor.*
E. C. BENEDICT, *Adv.*

Shipped by Livingston, Wells & Co., in good order and condition, on board the Falcon, whereof is master for the present voyage, now lying in the port of New York and bound for Chagres, one box, contents unknown, being marked and numbered as in the margin, and are to be delivered in the like order and condition at the aforesaid port of Chagres, outside bar, the dangers of the seas only excepted, unto S. Lea or Jackinson Nelson, or the assigns; freight for the said box paid, ten dollars and fifty cents, with primage and average accustomed.

Cook, Babcock & Co., California.

In witness whereof the master or purser of said vessel hath affirmed to three bills of lading, all of this tenor and date, one of which being accomplished, the others to stand void.

Dated in New York the 19th day of April, 1849.

Contents unknown. S. H. SEYMOUR.

(Endorsed:) LIVINGSTON, WELLS & Co.

District court of the United States, for the southern district of New York.

Filed the 27th day of February, 1850.

Stipulation entered into pursuant to the rules and practice of this court.

Whereas a libel was filed in this court on the twenty-seventh day of February, in the year of our Lord one thousand eight hundred and fifty, by James N. Olney against the Steamer Falcon, her engine, &c., for the reasons and causes in the said libel mentioned, and praying that the said steamer, her tackle, &c., may be condemned and sold to pay the demand of the libellant, and the parties hereto hereby consenting and agreeing, that in case of default or contumacy on the part of the libellant or their surety, execution may issue against their goods, chattels, and lands, for the sum of two hundred and fifty dollars.

Now, therefore, it is hereby stipulated, and agreed for the benefit of whom it may concern, that the stipulator undersigned shall be, and are bound, in the sum of two hundred and fifty dollars, conditioned that the libellant above named shall appear and answer to the cause, abide by the final decree entered in the cause, and shall pay all such costs as shall be awarded against him by this court, or, in case of appeal, by the appellate court.

JAS. N. OLNEY,
JAMES F. HALL.

Taken and acknowledged, this 27th day of February, 1850, before me.

GEO. W. MORTON,
U. S. Commissioner.

SOUTHERN DISTRICT OF NEW YORK, *ss.*

James T. Hall, party to the above stipulation, being duly sworn, deposes and says, he resides in the city of New York; that he is worth the sum of five hundred dollars, over and above all his just debts and liabilities.

Sworn to this 27th day of February, 1850, before me.

GEO. W. MORTON,
U. S. Commissioner.

United States district court.

JAMES N. OLNEY
vs.
THE STEAMER FALCON, her engine, tackle.

I hereby consent to waive the issuing of process of attachment against the said steamer, provided the claimants execute stipulations for costs and value, the latter in the sum of twenty-five hundred dollars, with sureties; the stipulators to justify before the commissioner, and to pay into court the costs of the officers of the court to the time of stipulating. The claimants further consent to appear and answer the libel on file on or before the 12th day of March next, and failing to do so, the default to be entered. The stipulation for value to represent the vessel, and be signed by M. O. Roberts and

CHAS. L. BENEDICT,
Proctor for libellant.

Feb'y 27, 1850.

Filed February 27, 1850.

Respondent's costs.

District court of the United States, for the southern district of New York. Filed the 27th day of February, 1853.

Stipulation entered into pursuant to the rules and practice of this court.

Whereas a libel was filed in this court on the twenty-seventh day of February, in the year of our Lord one thousand eight hundred and fifty, by James N. Olney, libellant, against the Steamship Falcon, her tackle, &c., for the reasons and causes in the said libel mentioned, and praying that the said steamship, her tackle, &c., may be condemned and sold to pay the demands of the libellants; and the parties hereto hereby consenting, that in case of default or contumacy on the part of the claimants or their surety, execution for the sum of two hundred and fifty dollars may issue against their goods, chattels, and lands:

And whereas, also, a claim and answer is to be filed in said cause

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by George Law and Marshal O. Roberts, now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulator undersigned shall be, and are hereby, bound in the sum of two hundred and fifty dollars, conditioned that the claimants above named shall pay all costs and expenses which shall be awarded against them by the final decree of this court, or upon an appeal, by the appellate court.

M. O. ROBERTS,
HENRY P. COFFIN.

Taken and acknowledged, this 27th day of February, 1850, before me.
GEO. W. MORTON,
U. S. Commissioner.

SOUTHERN DISTRICT OF NEW YORK, *ss.*

Marshal O. Roberts and Henry P. Coffin, parties to the above stipulation, being duly sworn, depose and say, and each for himself saith, that he is worth the sum of five hundred dollars, over and above all his just debts and liabilities.

M. O. ROBERTS,
H. P. COFFIN.

Sworn to this 27th day of February, 1850, before me.
GEO. W. MORTON,
U. S. Commissioner.

DISTRICT COURT OF THE UNITED STATES,
For the southern district of New York:

In admiralty.

Filed the 27th day of February, 1850.

Stipulation entered into pursuant to the rules and practice of this court.

Whereas a libel was filed on the twenty-seventh day of February, in the year of our Lord one thousand eight hundred and fifty, by James N. Olney against the Steamship Falcon, her tackle, for the reasons and causes in the said libel mentioned; and whereas the parties in interest have consented to file stipulations for costs and value, the latter in the sum of $2,500, in lieu of the vessel being in the custody of the marshal, under the process to be issued in pursuance of the prayer of said libel, and the claimants have by consenting to appear and answer to the libel on file on or before the 11th day of March instant, and failing so to do the default to be entered as appears from said consent now on file in said court; and the parties hereto hereby consenting and agreeing, that in case of default or contumacy on the part of the claimants or their surety, execution for the above amount may issue against their goods, chattels and lands:

Now, therefore, the condition of this stipulation is such, that if the stipulator undersigned shall at any time, upon the interlocutory or final

order or decree of the said district court, or of any appellate court to which the above named suit may proceed, and upon notice of such order or decree to Edward H. Owen, esquire, proctor for the claimant of said Steamer Falcon, abide by and pay the money awarded by the final decree rendered by the court or the appellate court, if any appeal intervene, then this stipulation to be void, otherwise to remain in full force and virtue.

M. O. ROBERTS,
H. P. COFFIN.

Taken and acknowledged, this 27th day of February, 1850, before me.

GEO. W. MORTON,
U. S. Commissioner.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Marshal O. Roberts and H. P. Coffin, parties to the above stipulation, being duly sworn, depose and say, and each for himself saith, that he is worth the sum of six thousand dollars, over and above all his just debts and liabilities.

M. O. ROBERTS,
H. P. COFFIN.

Sworn to, this 27th day of February, 1850, before me.

GEO. W. MORTON,
U. S. Commissioner.

At a stated term of the district court of the United States of America for the southern district of New York, held at the City Hall in the city of New York, on Wednesday, the twenty-seventh day of February, in the year of our Lord one thousand eight hundred and fifty.

Present: The honorable Samuel R. Betts, district judge.

THE STEAMSHIP FALCON, LAW & ROBERTS, claimants, adsm. JAMES N. OLNEY. } 8—113.

On filing a consent to stipulate and to waive process of attachment, and the terms being complied with, on motion of the proctor for the claimants: It is ordered, that no process of attachment issue, but that the stipulations for value represent the vessel.

DISTRICT COURT OF THE UNITED STATES,
For the southern district of New York:

May 1st, 1850. The claimant files his answer in the words and figures following, to wit:

To the honorable Samuel R. Betts, judge of the district court, within and for the southern district.

The claim and answer of George Law and Marshal O. Roberts, respondents to the libel and complaint of James N. Olney, against the

Steamer Falcon, her engine, tackle, apparel and furniture, and against all persons intervening for their interest therein, in a cause of contract civil and maritime. And thereupon the said respondents claim that they are the owners of the said Steamer Falcon, her tackle, apparel and furniture, and as such have a right to interests in this cause, for their interest therein; and these respondents, further answering the said libel and complaint, say:

First. That it is true, and they admit, that in the month of April, in the year 1849, the said vessel was lying in the port of New York, and destined on a voyage thence to a port of Chagres. But these respondents have no knowledge, and therefore cannot answer, whether or not the libellant or his agent did then or there ship on board of the said vessel a box of merchandise marked Cooke, Baker & Co., California, to be therein carried upon the high seas, and within the ebb and flow of the tide, from the port of New York to the port of Chagres, and there delivered in like good order as it was received, the damages of the seas only excepted, unto S. Lea or Zachrison & Nelson, or to their assigns; or that the libellant paid the freight thereon, amounting to ten dollars and fifty cents; or that the agent of the said vessel or any other person thereupon or at any time executed three bills of lading of the tenor and date, and to the effect stated in the said libel, in manner and form as in these several respects alleged in the said libel, and they therefore controvert the same.

Second. They further say that it is true, and they therefore admit, that the said vessel, shortly after the date mentioned in the first article of the said libel, did set sail and depart from New York upon the said voyage, and did afterwards arrive at Chagres aforesaid; but they, further answering from belief, deny that the said Lea or Zachrison & Nelson, the consignees of the said box of merchandise, or either of them, demanded the said goods and merchandise of those on board and in charge of the said vessel, as is alleged in the said libel. But these respondents in further answering the second article of the said libel say, that if the said box was shipped as alleged in the said libel, and if the consignees of the said box of merchandise did demand the said goods as alleged in the said article, then they from information and belief say, that the said merchandise was then and there well and truly delivered unto the said consignees or some one of them, or to the person or persons so demanding the same for and on their behalf, in like good order and condition as when received, the *damages* of the seas excepted.

They further, from their own knowledge and from information and belief, say, that no claim for the loss of said goods and merchandise was made upon the vessel or owners until many months after the alleged demand and now delivery. And these respondents believe that the said goods and merchandise were well and truly delivered at Chagres according to the terms of the agreement and undertaking in the said libel mentioned, and if the same lost, they were lost subsequent to that time.

Third. These respondents deny that by reason of the matters in the said libel alleged or otherwise, the libellant is entitled to recover of the said vessel the damages by him in the said libel claimed, or any part thereof.

They further answering admit and say, that it is true they have refused to pay the same to the libellant, and they insist that they are not, nor is the said vessel, in any manner liable to pay and satisfy the same or any part thereof.

Fourth. These respondents admit that at the time of filing the said libel, the said steamer was lying in the port of New York.

Last. That all and singular the premises are true and within the admiralty and maritime jurisdiction of this honorable court; in verification whereof, if denied, these respondents crave leave to refer to the depositions and other proofs to be by them exhibited in this cause.

Wherefore these respondents pray that the aforesaid libel be dismissed, with costs, and that right and justice in the premises may be in other respects administered by this honorable court.

MARSHALL O. ROBERTS.

Sworn to before me, this 1st day of May, 1850.

GEO. W. MORTON, *U. S. Com'r.*

May 2d, 1850. The libellant files his replication in the words following:

To the honorable Samuel R. Betts, judge of the district court of the United States, for the southern district of New York.

The replication of James N. Olney, libellant, to the answer of George Law and Marshall O. Roberts, claimants of the Steamship Falcon, her tackle, &c., alleges that he, the said libellant, will aver, maintain, and prove his libel to be true, certain and sufficient, and that the said answer of the said defendant is uncertain, untrue, and insufficient; and he humbly prays as in and by his said libel he has already prayed.

C. L. BENEDICT,
Libellant's proctor.

June 13, 1850. This cause being called in its order on the calender, Ordered hearing.

Evidence for libellant.

John M. Burt (sworn) says: Was clerk of Livingston & Wells four years up to within last four months. Frequently did business for Falcon, and has seen the purser sign bills of lading for the steamer. Thinks bill of lading produced is in his handwriting. The bill of lading signed to Livingston & Wells. The endorsement is in handwriting of one of firm.

X. Has had several bills of lading signed by Mr. Seymour; seen pur-

ser; knows him by sight; has heard him called by his name as he stood alongside of him; two years since saw him write, and then, perhaps, half a dozen times; recollection of his signature is not very distinct; thinks could distinguish an imitation of his hand, unless very closely like it.

April 19, 1849. Bill read, one box marked as in margin "shipped by Livingston, Wells & Co., in good order and condition on board the Falcon, whereof is master for the present voyage, now lying in the port of New York, and bound for Chagres." One box, contents unknown, being marked and numbered as in the margin, and are to be delivered in the like good order and condition, at the aforesaid port of Chagres, outside bar, (the dangers of the seas only excepted,) unto S. Lea, or Zachinson and Nelson, or their assigns; freight for the said box paid, ten dollars and fifty cents, with primage and average accustomed.

Cook, Baker & Co., California.

In witness whereof, the master or purser of said vessel hath affirmed to three bills of lading, all of this tenor and date, one of which being accomplished, the others to stand void.

Dated in New York, the 19th day of April, 1849.

Contents unknown. S. A. SEYMOUR.

(Endorsed:)

LIVINGSTON, WELLS & Co.

Samuel Lea (sworn): Knows Seymour, purser; has seen him write, and proves his signature to the bill of lading.

Witness demanded the box of goods named in bill of lading; was consignee of the box at Chagres, and received a way-bill of various packages, and one marked Cooke, Baker & Co.; one in question was not amongst those landed from Falcon at Chagres; proves letter written by him at Chagres, at time, to Livingston and Wells, and from his best recollection that gives true account of the matter, (dated May 6, 1849,) and annexed, marked A. Demanded package. Mr. Seymour said he thought it had been delivered with the others; searched in vessel for it but could not find it, and witness went ashore without it. It had never before come to witness; searched all around Chagres for it, i. e., place of landing the goods.

X. Was agent of Livingston & Wells at time there, and of no one else. Usual way of delivering goods when sent was in ships' boats, and landed opposite Chagres on bank of river, and left there with those to whom belonged; if no one was there to receive them, boatmen would throw them out on bank of river.

That was uniform way of landing by ships' boats; no warehouse there. Witness looked out himself for goods so landed to his charge.

Knows Captain Hedges; goods landed in same way when he commanded Falcon, as on this occasion; knows of no change.

Knows Mr. Ramos; he keeps store there; don't recollect going there for this package.

Express goods were not landed at Ramos, but on opposite side of river.

Xd. Ship usually brought none but express goods, except those belonging to passengers; Zachrisson, Nelson & Co., forwarding and express men.

Defence.

Henry J. Hartstein (sworn): Took command of Falcon last of May, 1849; ran her to Chagres, New Orleans, and Savannah; landed cargoes in ships' boats and canoes, to whatever place consignees directed, i. e., put on the beach; principal landing was, in 1849, at Ramos' house, in old Chagres—in part of his house—landing on bank; is on opposite side of river, which is 150 yards wide there.

Never knew an instance of boats bringing back goods to ship; ship anchored a little over a mile from landing place; it has been my practice never to send goods ashore till claimed.

Samuel A. Seymour's deposition.

United States district court.

THE STEAMER FALCON, her tackle, &c., ads.
JAMES N. OLNEY.

It is hereby stipulated that Samuel A. Seymour be examined as a witness, de bene esse, in this cause, on the 26th day of June instant, at 12 o'clock m. of that day, at the office of E. H. Owen, claimant's proctor, that such deposition, when sworn to, may be read on any trial of this cause with like effect, subject to all legal objections as if the same had been taken before a United States commissioner, and that the same need not be filed, but may remain in the possession of the claimant's proctor, a copy to be furnished by the libellant's proctor.

CHAS. L. BENEDICT,
Proctor for libellant.

To be adjourned if we don't get there.

June 24th, 1850.

JUNE 27, 1850.

SOUTHERN DISTRICT OF NEW YORK, *ss.*

Samuel Seymour, sworn and examined, de bene esse, as witness on the part of the claimants in this case, deposeth and saith in answer to the several questions put to him as follows, viz: I am a native of this State, and when here usually stop at Brooklyn. I am now mail agent of the United States, bound from New York to San Francisco and back, and expect to leave here on the 20th instant for San Francisco; when here, I am to be found by inquiring of James Van Nostrand, president of the Merchants' Exchange Bank, who is my brother-in-law.

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I was purser of the Steamship Falcon on her voyage from New York to Chagres and back in April and May, 1849. I remember the parcel received on board the ship from Livingston, Wells & Co., (who are express agents,) on that voyage to be taken out to Chagres. I recollect among others there was a box or trunk marked for Cooke, Baker & Co., of San Francisco.

On our arrival at Chagres there was no demand made for it on board the ship by any one. All the parcels we had on board on freight were sent on shore in charge of the second mate of the ship, (William Hovey,) to be delivered to J. Ramos, who was the agent at Chagres of Zachrisson and Nelson, of Panama. Ramos always refused to give receipts for goods. Mr. Nelson, one of the firm of Zachrisson and Nelson, told me that the said Ramos was the agent of that firm to receive goods and forward them; I delivered a great many packages to him as such agent, and there has been no claim of loss, and no dispute to my knowledge about any parcel except the present one.

On this occasion the 2nd mate took the goods from the ship in one of the quarter boats; I saw the goods carefully put into the boat to go on shore; it was my business to see to them. The decks were all cleared; every thing went into the boat. The box before going into the boat was on the quarter-deck, where it was hoisted out of the after hold; I am sure it went into the mate's boat to go on shore. The ship lay a mile or a mile and a half from the shore, and at the usual anchorage. The men who rowed the boat ashore belonged to the steamer; and the boat came back without bringing back any of the parcels. Neither Ramos or any one on the part of the consignees came on board after the goods; I sent word to him that there were goods on board consigned to his house. He never, on any of the voyages, came or sent after consigned goods belonging to others, to my knowledge. Once when we had some goods marked for the firm itself, he went off after them. He must have known of our arrival; we lay in open sight of his house.

Mr. S. Lea was understood to be the agent of Livingston, Wells & Co., for the transportation of their freight over the Isthmus; I do not recollect seeing him at all on the voyage in question; I believe I never saw him but twice; he had no place at Chagres that I know of.

S. A. Seymour being cross examined, he says: I have not any recollection of the particular package; there were several, I believe, shipped; I would not swear to any out of a thousand. I do not mean there were several marked Cooke, Baker & Co.; I do distinctly remember that there was one marked Cooke, Baker & Co.

About how long was that box?

A. I can't tell the size; I suppose about the size of a good-sized trunk, as that is about the size package they send across there.

Q. Can you tell how deep or wide it was?

A. I can't tell anything about its size, except it was a package of goods.

Q. Can you say that it was a box?

A. No, sir.

Q. Can you say that it was not a box?

A. No, sir.

Q. Can you say anything about its color?

A. No, sir.

Q. Can you state whether there was any other name on the package except Cooke, Baker & Co.?

A. I do not recollect seeing any other name on it; I should not have noticed it had I not known Mr. Cooke very well.

Q. Do you know whether it was on the manifest?

A. We do not make up any manifest for Chagres, but do for New Orleans and Havana; the difference is because freight for Chagres is shipped as extra baggage, to save clearing. We keep a freight book where all freight should be entered; it would be my duty to enter it there; I can't say that I did.

Q. Do you remember ever having seen it in the freight book?

A. I can't say yes or no to that; I did not see the package in New York; I do not see packages here; that is the mate's business.

Q. When was the first time you recollect seeing that package?

A. At Chagres, on board the steamer; I did not go ashore in the boat at Chagres; don't think I went ashore at Chagres that voyage; we lay not more than 2½ days, if so much, at Chagres; we lie there about a mile or a mile and a half from the shore; boat was not full of goods.

Q. Do you recollect seeing that box or package in that boat?

A. I recollect seeing that box or case on the deck, and after the boat went away there was no box there; of course it must have gone in the boat. All Chagres freight was paid here; that was the rule of the office; receive no freight for Chagres unless the freight was paid. It was the duty of the first mate to receive goods here; he signed receipts, which receipts were brought to me to make up the freight; I signed all bills of lading in the ship which were signed; it was my duty, but it was not my practice to sign bills of lading for Chagres; my orders were strictly against it, but I may have done so in the hurry of business. I do not remember seeing packages in other voyages marked Cooke, Baker & Co.; I can't say there were none, but I have no recollection of any; I should have been likely to have noticed them. I was in the Falcon from August 23d, in one year, to November 10, the next year, about fifteen months; always in the same capacity.

S. A. SEYMOUR.

Sworn to before me, this 27th June, 1850.

CHAS. W. NEWTON,
U. S. com'r.

At a stated term of the district court of the United United States of America, for the southern district of New York, held at the city hall

in the city of New York, on Monday, the second day of February, in the year of our Lord one thousand eight hundred and fifty-two.

Present, the honorable Samuel R. Betts, district judge.

JAMES OLNEY
vs.
THE STEAMSHIP FALCON, her tackle, &c. } 8—113.

This case having been heard on the pleadings and proofs, and argued by the advocates for the respective parties, and due deliberation being had in the premises, it is now ordered, adjudged, and decreed by the court, that the libel filed in this cause be dismissed, with costs to be taxed against the libellant. On *on* motion of the proctor for the claimants, it is further ordered, that unless an appeal be taken to the decree within the time limited and prescribed by the rules of this court, that the stipulators for the libellant's costs pay into the registry of this court the amount of their stipulations for costs, and that the clerk distribute the proceeds in satisfaction of this decree.

SAME
vs.
SAME.

SIR: Please take notice that the libellant intends to appeal from the final decree of the court in this cause.

Yours, &c., C. L. BENEDICT,
Libellant's proctor.

E. H. OWEN, esq., *Resp'ts proct.*, and
GEO. M. MORTON, esq., *U. S. district clerk.*

Endorsed: Vol. 8, No. 113.

U. S. district court, for the southern district of New York.

JAMES OLNEY
vs.
THE STEAMSHIP FALCON, her tackle, &c.

E. H. OWEN, *Proct. for cl't.*

Final decree dismissing libel, filed second day of February, 1852.

Circuit court of the United States of America, for the Southern district of New York, in the second circuit.

JAMES N. OLNEY, libellant and appellant,
vs.
THE STEAMSHIP FALCON, her engine, tackle, &c., and George Law and Marshall O. Roberts, claimants and appel's. } Bond for costs.

Know all men by these presents, that we, James N. Olney, William A. Sale, jr., and Abraham B. Warner, of the city of New York,

are held and firmly bound unto the above named George Law and Marshall O. Roberts, in the sum of five hundred dollars, to be paid to the said claimants, for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated the twelfth day of April, in the year of our Lord one thousand eight hundred fifty-two.

Whereas the above named James N. Olney has prosecuted his appeal to the circuit court of the United States, for the southern district of New York, in the second circuit, to reverse the decree rendered in the above entitled suit, by the judge of the district court of the United States, for the southern district of New York:

Now, therefore, the condition of this obligation is such, that if the above named James N. Olney shall prosecute his said appeal to effect, and answer all damages and costs if he fail to make such appeal good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

JAMES N. OLNEY, [L. S.]
WM. A. SALE, [L. S.]
ABM. B. WARNER. [L. S.]

Sealed and delivered, and taken and acknowledged, this 12th day of April, 1852, before me.

CHAS. ELIOT SCOVILLE,
U. S. Com.

UNITED STATES OF AMERICA,
Southern district of New York, ss.

William A. Sale, jr., and Abraham B. Warner, of the said district, being duly sworn, do depose and say, and each for himself says, that he is worth the sum of one thousand dollars, over and above all his just debts and liabilities.

WM. A. SALE, JR.
ABM. B. WARNER.

Sworn to this twelfth day of April, A. D. 1852, before me.
CHAS. ELIOT SCOVILLE,
U. S. Commissioner.

United States circuit court.

JAMES N. OLNEY, libellant and appellant,
vs.
THE STEAMSHIP FALCON, her tackle, &c., George Law, et al., claimants and appellees.

To the honorable the circuit court of the United States, for the southern district of New York, in the second circuit.

The appeal of James N. Olney, libellant and appellant, respectfully shows:

That on or about the twenty-seventh day of February, one thousand eight hundred and fifty, the libellant exhibited his libel in the district court of the United States, for the southern district of New York, against the Steamship Falcon, her tackle, apparel, and furniture, and against all persons intervening for their interest therein, claiming over fifty dollars, and praying, among other things, that the said steamship might be condemned and sold to pay the sum demanded in said libel, with costs, as will more fully appear by reference to said libel, and to which, for the contents thereof, this appellant craves leave to refer.

That process thereon having been waived by the respective parties on or about the said twenty-seventh day of February aforesaid, George Law and Marshall O. Roberts appeared in said district court and claimed the said vessel; and thereafter, on or about the first day of May, in the same year, filed their answer to said libel, praying that the said libel might be dismissed, with costs in that behalf, as by reference to said answer will more fully appear, and to which, for the contents thereof, these appellants crave leave to refer.

That a replication to said answer having been duly filed by this appellant, the said cause thereafter, and on or about the thirteenth day of June, one thousand eight hundred and fifty-one, came on to be heard before the honorable Samuel R. Betts, judge of the said district court, upon the depositions and proofs adduced by the respective parties, and the said judge having advised thereon, on or about the second day of February, one thousand eight hundred and fifty-two, made a decree therein dismissing the said libel with costs.

And this appellant is advised and insists, that the said decree, and every part thereof, is erroneous, inasmuch as the libellant was entitled to recover of the said steamship the amount by him demanded in the said libel.

And this appellant, for these and other reasons, appeals from the whole of said decree to the next circuit court, to be held in said district court; on said appeal he intends to have said cause heard anew in the circuit court on the pleadings and proofs in the district court, and other proofs to be introduced in the said circuit court, and he prays that the record and proceedings herein may be returned to the circuit court, and the said decree, and every part thereof, may be reversed, with costs, and that the said vessel may be condemned and sold to pay the demand of the libellant, together with his costs to be taxed.

C. L. BENEDICT,
Proct. for libellant and appellant.

Filed, April 13, 1852.

A.—(*Letter referred to, folio* 43.)

GREGORIA, *May 6th*, 1849.

MESSRS. LIVINGSTON, WELLS & CO.

GENTS: I hasten to inform you that a bearer of dispatches has just passed down on his way to Washington from San Francisco; he brings

the intelligence of the arrival of the Steamer Oregon and California at Panama, but without much gold. The news of its plenteousness, however, is confirmed. The box sent pr. Steamer Falcon, marked Baker, Cooke & Co., was not delivered to me; I had to send on board for the articles, and only the three mail bags were delivered to the boatmen. I sent the trunk I found on shore. I told the clerk of the boat when he refused to land them, that I would send a boat for them, which I did, but he had neither the box or trunk on board to deliver. I have searched for the box without success; they acted very strangely in regard to it, saying they were not bound to deliver anything but baggage; the Crescent City, on the contrary, lands it wherever directed.

The river is very high, and the roads in a horrible condition.

I am, gents, yours truly,

SAM. LEA.

We consent that this copy letter be inserted in the apostles in this cause.

(Signed) E. H. OWEN.

New York, September 16, 1852.

WEDNESDAY, *Sept.* 28, 1853.

The court met pursuant to adjournment, and is opened by proclamation.

Present: Judge Nelson.

JAMES H. OLNEY
vs.
THE STEAMSHIP FALCON, &c.

This cause being called on the calendar, order and hearing, Mr. C. L. Benedict reads from the apostles the evidence below on part of libellant.

Mr. Betts reads from the apostles the evidence below on part of claimant.

Mr. Benedict reads the deposition of Joseph J. Cooke and Samuel Lea, taken and filed in the circuit court.

Mr. E. C. Benedict argues on part libellant.

Mr. Betts argues on part of claimant. Mr. Benedict is heard in reply.

Cur. adv. vult.

Deposition of J. J. Cooke.

CIRCUIT COURT UNITED STATES.

JAMES N. OLNEY
vs.
THE STEAMSHIP FALCON. } On appeal.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Joseph J. Cooke, of the city of San Francisco, merchant, being duly sworn and examined as a witness on the part of the libellant in this

cause, says, that he was a member of the firm of the mercantile house of Cooke, Baker & Co., of San Francisco, California, in 1849, and part of 1850. We received in the spring of 1849 an invoice of Colt's carbines, consigned to us by the libellant for sale on commission, said to be shipped by Livingston, Wells & Co.'s express, by way of the Isthmus of Panama; and also an invoice of the same article shipped by ship Menno for San Francisco; the last named we received and sold, the former never came to hand.

Our house made application to the agents of Livingston, Wells & Co., at San Francisco—think firm was Navin & Livingston, composed of Joshua P. Navin and Clarence Livingston—for the goods advised of as sent by Livingston, Wells & Co.'s express; the answer was to the effect that they had not been received. I think that I conversed with Mr. Haven myself on the subject; that is my belief and impression, but I cannot state positively. Sixty days would have been a liberal time for the express to have transported the goods. I think it was April we received the advices, but it may have been later. They should have been worth fifty dollars each, incomplete as they were. The invoice stated the accoutrements, powder flask, cartridges, &c., were not complete; if complete, would have been worth seventy to seventy-five dollars each. There were twelve of them; they never came to hand. On recollection our advices could not have been received sooner than June, as the first steamer after my arrived in June, 1849.

X. The demand for fire-arms was good; but the markets were not regular for anything. My brother and I carried out some of these carbines. We received them first day of April; think we sold them about June. We sold one for ninety dollars and others for about the same price; they were complete. Olney's carbines incomplete; only wanted some of the accoutrements, that is they were so invoiced.

JOSEPH J. COOKE.

Sworn before me this 16th April, 1852.

JAS. W. HALE,
Com. of deeds.

I hereby consent that the foregoing deposition be read on the hearing in this cause, subject to all legal objections.

E. H. OWEN.

April 16, 1852.

Deposition of Samuel Lea.

UNITED STATES OF AMERICA,
Southern district of New York,
city, county, and State of New York, ss.

Be it remembered, that on this twenty-fifth day of September, in the year of our Lord one thousand eight hundred and fifty-two, I, Kenneth G. White, a commissioner duly appointed by the circuit court of the United States, for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress, entitled "An act

for the more convenient taking of affidavits and bail in civil causes, depending in the courts of the United States," passed February 20th, 1812, and the act of Congress, entitled "An act, in addition to an act, entitled 'An act for the more convenient taking of affidavits and bail in civil causes, depending in the courts of the United States,' " passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, did call and cause to be and personally appear before me, at my office, at No. 51, Wall street, in the city of New York, in the said southern district of New York, in the State aforesaid, Samuel Lea, to testify and the truth to say, on the part and behalf of the libellants in a certain suit or matter of controversy, now depending and undetermined, in the circuit court of the United States, for the southern district of New York, wherein James N. Olney is libellant against the Steamship Falcon, and George Law and Marshal O. Roberts are claimants.

And the said Samuel Lea, being about the age of thirty years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said Samuel Lea, and he did thereupon depose, testify, and say as follows, viz:

I am the Mr. Lea examined before on the trial of this cause. When I made the demand for the box the ship was lying outside of the bar. Neither Zachrisson nor Nelson were at that time at Chagres.

Q. Did Zachrisson, or Nelson, or their agents, according to the usual course of business, act as consignees of express goods at Chagres when you were present at Chagres?

Objected to by counsel for claimants.

A. They did not. If Zachrisson or Nelson, or their agents, had, in the usual course of business, received this box, they would have delivered it to me or informed me that they had it. I was often at Ramos, every day or two; this box could not have been delivered at Ramos from this steamer, and I not know it; Ramos had no connection whatever with express goods, neither as the agent of Zachrisson and Nelson or otherwise; Ramos did not usually receive express goods for Zachrisson and Nelson, nor have any authority so to do that I know of. It was known all over the American side of the river that this box was lost, from my making inquiries for it; I forwarded across the Isthmus the goods that were landed from this steamer; this box was not among them.

The witness being cross examined says: My business, at the time referred to, was forwarding agent on the Isthmus; had these goods been received, it would have been my duty to have forwarded them to Panama. My place of business was on the American side of the river, which is the right side going up; there were a few houses on this side of the river. Zachrisson and Nelson were connected with Livingston, Wells & Co., as their shipping agent from Panama to California. Ramos was the agent of Zachrisson and Nelson at Chagres, to receive and forward goods consigned to them; his place of business was on the opposite side of the river from where mine . I do not recollect

whether Zachrisson and Nelson's name was on the bills of lading together with mine or not; I received sometimes bills of lading for goods and sometimes way-bills. In case where I received way-bills, I do not know whether there were bills of lading sent or not.

On further direct examination he says: I am not interested in this suit, one way or the other.

Q. Could these goods have been received at Ramos at this time, and you not know it?

Objected to.

A. They could not.

SAMUEL LEA.

Sworn to before me, this 25th day of September, 1852.

KENNETH G. WHITE,
U. S. com'r.

UNITED STATES OF AMERICA,
Southern district of New York, ss.

I Kenneth G. White, a commissioner, duly appointed by the circuit court of the United States, for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes, depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act, in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes, depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, do hereby certify that the reason for taking the foregoing deposition is, and the fact is, that the case is an appeal from the district court, and the testimony is taken pursuant to the rule of the supreme court and the practice of this court.

I further certify, that a notification of the time and place of taking the said deposition, signed by me, was made out and served on the counsel for the claimants to be present at the taking of the depositions, and to put interrogatories if he or they might think fit.

I further certify, that on the twenty fifth day of September, A. D. 1852, I was attended by Charles L. Benedict, counsel for the libellants, and E. H. Owen, counsel for claimants, and by the witness, who was of sound mind and lawful age, and the witness was by me carefully examined, and cautioned, and sworn to testify the whole truth, and the deposition was by me reduced to writing in the presence of the witness, who subscribed the same in my presence. I have retained the said deposition in my possession for the purpose of filing the same with my own hand to the court, for which the same was taken.

I further certify, that I am not of counsel or attorney for either of the parties in said deposition and caption named, or in any way interested in the said cause named in the caption.

In testimony whereof I have hereunto set my hand and seal, this twenty-fifth day of September, in the year of our Lord 1852, and of the independence of the United States the seventy-seventh.

KENNETH G. WHITE,
U. S. com'r circuit court of the U. S., for the S. D. N. Y.

At a special term of the circuit court of the United States of America, for the southern district of New York, in the second circuit, held at the City Hall in the city of New York, on the fourteenth day of October, in the year of our Lord one thousand eight hundred and fifty-two.

Present: the honorable Samuel Nelson, an associate justice of the Supreme Court of the United States.

THE STEAMSHIP FALCON, &c., George Law and others, complainants, ads. JAMES N. OLNEY.

This cause having been brought on to argument upon the appeal taken by the above named libellant, from the decree of the district court of the United States, for the southern district of New York, made in the above entitled cause; after hearing counsel for the respective parties, and mature deliberation being thereupon had, it is ordered, adjudged and decreed, and this court, by virtue of the power and authority therein vested, does order, adjudge and decree, that the decree of the district court so appealed from as aforesaid be, and the same is hereby in all respects, affirmed, with costs to the claimants to be taxed.

And it is accordingly further ordered, adjudged and decreed, that the libel herein be dismissed, and that the said claimants do recover against the said libellants and against the stipulators on the appeal herein the sum of one hundred and thirteen dollars and twenty cents, being the amount of the claimants' costs, as taxed in the court below, with interest thereon up to the date of this decree, and also ninety-five dollars and fourteen cents, the claimants' costs of this court; amounting in the whole to two hundred and eight dollars and thirty-four cents.

And it is further ordered, that the stipulators on the appeal in this court do, within ten days, pay into court the amount of their stipulations, or so much thereof as may be sufficient to satisfy this decree, and that the clerk of this court pay the same over to the claimant herein, or to his proctor in satisfaction thereof; and that unless they pay the said sum, or an appeal be taken from this decree within the said last mentioned time, that judgment for the said sum be entered against them, and that the claimants have execution thereon in satisfaction of this decree.

Circuit court of the United States of America, for the southern district of New York, in the second circuit.

JAMES N. OLNEY, libellant and appellant,
vs.
THE STEAMSHIP FALCON, her tackle, &c., and George Law and Marshal O. Roberts, claimants and appellees.
} Bond for costs.

Know all men by these presents, that we, William A. Sale, jr., of No. 46 South street, in the city of New York, merchant, and Abraham B. Warner, of No. 29 West street, in the said city, merchant, are held and firmly bound unto the above named George Law and Marshal O. Roberts, in the sum of six hundred dollars, to be paid to the said appellees, for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated the twelfth day of October, in the year of our Lord one thousand eight hundred and fifty-three.

Whereas, the above named James N. Olney has prosecuted an appeal to the Supreme Court of the United States, at the city of Washington, in the district of Columbia, to reverse the decree rendered in the above entitled suit, by the judge of the circuit court of the United States, for the southern district of New York:

Now, therefore, the condition of this obligation is such, that if the above named James N. Olney shall prosecute his appeal to effect, and answer all damages and costs if he fail to make his appeal good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

(Signed) WM. A. SALE, [SEAL.]
ABRAHAM B. WARNER. [SEAL.]

Sealed and delivered, and taken and acknowledged, this 12th day of October, 1853, before me.

CHAS. ELIOT SCOVILLE, *U. S. com'r.*

UNITED STATES OF AMERICA,
Southern district of New York, ss:

William A. Sale, jr., and Abraham B. Warner, the within obligors, being duly sworn do depose and say, and each for himself saith, that he is worth the sum of twelve hundred dollars, over and above all his just debts and liabilities.

WM. A. SALE, JR.,
ABRAHAM B. WARNER.

Sworn to this twelfth day of October, A. D. 1853, before me.

CHARLES ELIOT SCOVILLE,
U. S. com'r.

New York, October 14, 1853. I approve the within bond.

SAM'L R. BETTS.

Filed, October 15, 1853.

Appeal to the U. S. Supreme Court.

SUPREME COURT OF THE UNITED STATES:

JAMES N. OLNEY, libellant and appellant,
vs.
THE STEAMSHIP FALCON, her tackle, &c., George Law & Marshall O. Roberts, claimants and respondents.

To the honorable the Supreme Court of the United States.

The appeal of James N. Olney, the above named libellant and appellant, respectfully showeth, that on about the twenty-seventh day of February, one thousand eight hundred and fifty, the appellant, James N. Olney, filed his libel in the district court of New York, against the Steamship Falcon, her tackle, apparel and furniture, and against all persons lawfully intervening for their interest therein, in a cause of contract civil and maritime, in and by which it was prayed that process might issue against the said steamship, and that all persons having or pretending to have any right, title or interest therein might be cited to appear and answer upon oath the allegations of said libel, and that said court would decree payment to the libellant of the sum by him in said libel claimed to be due, being the principal sum of eighteen hundred dollars and upwards, besides the interest.

That thereupon George Law and Marshall O. Roberts, intervening for their interest, filed stipulations for costs in the sum of five hundred and fifty dollars, and for value in the sum of two thousand and five hundred dollars, and their claim and answer, which answer among other things denies that the libellant is entitled to recover of the said vessel the sum claimed by him to be one, and prays that the said libel may be dismissed with costs.

That a general replication was thereafter duly filed, and the said cause came on to be heard before the honorable Samuel R. Betts, judge of the district court aforesaid, on or about the thirteenth day of June, eighteen hundred and fifty-one; and the said judge having advised thereon, on or about the second day of February, eighteen hundred and fifty-two, made a decree dismissing said libel with costs.

That after such decree the libellant duly appealed therefrom to the next circuit court of the United States to be held in said district, and the said cause was removed thereby to said circuit court of the United States, and there tried anew upon the pleadings and proofs adduced in the district court, and new proofs adduced in the circuit court, and upon his said proofs and allegations the libellant claimed the said principal sum as due to him with the interest, amounting at the time of such trial in the said circuit court to the sum of two thousand and two hundred and fifty dollars and upwards; and such proceedings were thereupon had, that on or about the 14th day of October, eighteen hundred and fifty-three, the said circuit court made a final decree in said cause, affirming the decree of the district court and dismissing the said libel; which said decree of the said circuit court is as the appellant is advised

erroneous, and ought to be reversed, inasmuch as the said libellant was entitled to recover on his said proofs and allegations the said sum of two thousand two hundred and fifty dollars.

Wherefore this appellant appeals from the whole of said decree of said circuit court to the Supreme Court of the United States, and respectfully prays that the said decree of the circuit court, and the libel, answer, pleadings, depositions, evidence and proceedings in said cause may be sent to the Supreme Court of the United States without delay, and that the said Supreme Court will proceed to hear the said cause anew, upon the pleadings and proofs in said circuit court and such other evidence as may be adduced in the said Supreme Court, and that the said decree and every part thereof may be reversed with costs, and such sum be decreed to the libellant as he shall be in law and justice entitled to receive, or such other or further decree made as to the Supreme Court shall seem just.

Dated, New York, October 14, 1853.

C. L. BENEDICT,
Proctor for libellant and appellant.
E. C. BENEDICT, *Advocate.*

United States circuit court.

JAMES N. OLNEY, libellant and appellant,
vs.
THE STEAMSHIP FALCON, her tackle, &c., and George Law and Marshall O. Roberts, claimants and respondents.

SOUTHERN DISTRICT OF NEW YORK, *ss.*

William D. Jones, of said district, being duly sworn, says: That on the twentieth day of October, 1853, he served on Marshall O. Roberts, one of the claimants and respondents in this cause, a copy of the annexed citation, by delivering the same to him personally, and leaving the same with him, and at the same time showing him the original thereof.

WM. D. JONES.

Sworn to before me, this 21st day of October, 1853.

CHAS. ELIOT SCOVILLE,
United States Commissioner.

United States circuit court.

JAMES N. OLNEY, libellant and appellant,
vs.
THE STEAMSHIP FALCON, her tackle, &c., and George Law and Marshall O. Roberts.

SOUTHERN DISTRICT OF NEW YORK, *ss.*

Charles L. Benedict, of said district, being duly sworn, says: That